Filed 8/29/19 In re Jessica C. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re Jessica C., a Person Coming Under the Juvenile Court Law.	B294495 (Los Angeles County Super. Ct. No. 18CCJP04551)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. R.C., Defendant and Appellant.	

APPEAL from findings and orders of the Los Angeles Superior Court, Natalie P. Stone, Judge. Affirmed.

Konrad S. Lee for Defendant and Appellant R.C.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Stephanie Jo Reagan, Principal Deputy County Counsel.

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The juvenile court exerted dependency jurisdiction over a three-month-old baby because her mother had a "history of mental and emotional problems" that placed the child at risk of harm, and thereafter removed the baby from the mother's custody. In this appeal, mother argues that (1) substantial evidence does not support the juvenile court's finding that "reasonable efforts" were made to prevent removal, and (2) the juvenile court's findings in this regard are insufficient. We conclude the juvenile court's removal order is not tainted by reversible error, and affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

R.C. (mother) gave birth to Jessica C. in July 2018.

Mother had been diagnosed as Bipolar and exhibited paranoid behavior whenever she did not take prescribed medications. Just one month before Jessica was born, mother went to the police station to report that her "immigrant neighbors were after her" and, after she "started throwing chairs" at the officers at the station, was involuntarily held for psychiatric evaluation. Right after Jessica was born, mother reported that Jessica's father was a "Mexican [c]artel" member and that "Hispanic women [were] after [her] baby"—who was half-Latino—because, in mother's view, "Latino women are trying to keep the babies within their families." At one point, mother became so agitated about it that she ran down the hallways of the

hospital yelling loudly about it—with Jessica in tow. After a clinical social worker employed by the hospital reported mother's behavior to the Los Angeles Department of Children and Family Services (the Department), mother began asserting that the nurses at the hospital were conspiring against her. Mother nonetheless insisted that her Bipolar diagnosis was incorrect and denied "any history of mental illness."

In 2001 and 2011, two of mother's other children—Marcus A. and Fabian L.—had been declared dependents of the juvenile court based in whole or in part upon findings that mother's mental health posed a risk of harm to them. In each instance, mother had "engaged in combative behavior" while holding the child.

II. Procedural History

Within a week of Jessica's birth, the Department filed a petition asking the juvenile court to exert dependency jurisdiction over Jessica due to (1) mother's "history of mental and emotional problems including [her] diagnosis of Bi-Polar Disorder and paranoid behavior," which "endanger[ed] [Jessica's] physical health and safety and place[d] the child at risk of serious physical harm and damage" (rendering dependency jurisdiction appropriate under Welfare and Institutions Code section 300, subdivision (b) and (j)),[1] and (2) mother's "history of substance abuse, including methamphetamine, cocaine, . . . alcohol" and "marijuana," which also "plac[ed] the child at risk of serious physical harm and damage" (rendering dependency jurisdiction appropriate under section 300, subdivision (b)).

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1 All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

On July 24, 2018, the juvenile court detained Jessica from her mother pending adjudication of the Department's petition.

In a Jurisdiction and Disposition Report filed with the juvenile court on September 7, 2018, the Department reported the "Reasonable Efforts" it had taken to avoid removing Jessica from mother's custody during the adjudication of the Department's petition—namely, "Emergency Response Services," "Crisis Intervention," "Placement Services," "Referrals To Community Resources," "HUB referral," "Request for police report," "Detention Hearing Report," and "Jurisdiction/Disposition Interviews." The Department also reported that mother "receives medication management from Dr. Matthew Fogarty" and had completed one parenting class. In a supplemental "last minute" report, the Department added that "mother continues to struggle" with staying on her medications. Although one of mother's monitored visits with Jessica was "appropriate," in later visits she "became agitated and verbally aggressive," "'very hostile'" toward personnel, "unpredictable" and "emotional" and appeared ready to instigate physical violence against personnel while holding Jessica.

The court held a jurisdictional and dispositional hearing on November 1, 2018. Mother called the hospital's clinical social worker as a witness.

Following the argument of counsel, the juvenile court dismissed mother's substance abuse as a basis for dependency jurisdiction, but exerted jurisdiction over Jessica on the basis of mother's mental illness. More specifically, the court took jurisdiction because (1) mother had "admit[ed] to a diagnosis of Bipolar," but had a "tendency . . . to minimize her mental health issues," which "may be when she is most symptomatic, and [thus]

. . . when the child would be most at risk in her care," (2) mother's "symptoms," which "include[] paranoia," were "still very active" and "present[ed] a risk" to Jessica when mother was not "medication-compliant," and (3) mother did not yet "have a long enough history of medication compliance and stability to be able to conclude that mom does not present a risk" to Jessica "at this time."

The court then ordered Jessica removed from her mother based on its finding, "by clear and convincing evidence," that "there would be a substantial danger to [Jessica]'s physical health . . . if she were returned to mother at this time, and there are no reasonable means of protecting [Jessica] without removing her from mother's custody." The court also found that "the Department made reasonable efforts to prevent removal." The court then ordered reunification services, including that mother attend parenting classes, developmentally appropriate and individual counseling, and mental health counseling; that mother undergo random drug testing, a "psychological assessment [and] psychiatric evaluation"; that mother "take all prescribed medications"; and that mother attend visitations with Jessica.

Mother filed this timely appeal.

DISCUSSION

A juvenile court may not remove a child from her custodial parent's home "unless the . . . court finds," by "clear and convincing evidence," that (1) "[t]here is or would be a substantial danger to the physical health, safety, protection or physical or emotional well-being of the [child] if the [child] were returned home," and (2) "there are no reasonable means by which the [child's] physical health can be protected without removing the [child] from the [child's] parent's . . . physical custody." (§ 361,

subd. (c)(1).) To effectuate the second requirement, "[t]he court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the [child] from . . . her home." (*Id.*, subd. (e).) To provide a means of appellate review, "[t]he court shall [also] state the facts on which the decision to remove the [child] is based." (*Ibid.*)

As a threshold matter, we note that mother has likely waived both claims for failure to object below. (*In re Kevin S.* (1996) 41 Cal.App.4th 882, 885 [mother waived the right to contest finding of reasonable reunification efforts by not objecting in trial court].) But we will nevertheless address the merits of her claims.

I. Substantial Evidence Challenge

Mother first argues that the juvenile court's finding that the Department made "reasonable efforts" to prevent Jessica's removal lacks evidentiary support in the record. Because the court's "reasonable efforts" finding is part of its overall ruling on removal, our role is a limited one: We ask only "whether substantial evidence"—that is, "evidence which is reasonable in nature, credible, and of solid value"—"supports the [finding]," and do so viewing "the record in the light most favorable to th[at] [finding]." (*In re A.E.*(2014) 228 Cal.App.4th 820, 826; *In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.)

Substantial evidence supports the juvenile court's finding that the Department made "reasonable efforts" to prevent or eliminate the need for removal. The risk of "serious physical harm or damage" to Jessica in this case stemmed from the symptoms of mother's mental illness that surfaced whenever mother stopped taking her medication. Here, mother was "receiv[ing] medication management" services to ensure that she

stayed on her medications, and Department employees would occasionally watch mother take her morning medications to verify that she was taking them. And, when the Department received indications that mother's mental health was regressing, it attempted to follow up with mother's existing treatment team, but those efforts were frustrated by mother's failure to authorize release of her medical information. These efforts to ensure that mother was regularly taking her medications, if successful, would have eliminated mother's symptoms, thereby eliminating the risk to Jessica and the need for removal. The Department also gave referrals for additional community resources, including placement and rehabilitative services, and provided mother with transportation assistance. The Department's reports show that it remained in steady contact with mother from the time Jessica was detained until her removal hearing. These efforts were reasonable.

Mother raises what boils down to two arguments in response.

First, she asserts that we cannot consider the medication management services she received because those services were already being provided to her *as a condition of her parole*, and not because the Department arranged them as part of this case. While we accept this assertion's factual premise (namely, that mother was receiving medication management services as part of her parole) we reject the assertion's legal conclusion. "The Department," in making efforts to avoid removal, is "entitled to rely on services from private agencies and individuals." (*In re H.E.* (2008) 169 Cal.App.4th 710, 725.) From this, it necessarily follows that the Department may rely on services provided by private individuals no matter which public agency ordered them

to be provided. Any other rule would lead to an absurd result: A juvenile court would be required to ignore any efforts to avoid removal provided by other public agencies based on the mere happenstance of *who* was ordering those efforts, thus restraining the court's power to keep a child safe through removal due to circumstances that have nothing to do with the reasonableness of the Department's efforts.

Second, mother contends that the Department's efforts, even considering the medication management services, were not reasonable because, in her view, further efforts—such as having Department personnel make unannounced visits, ordering her to have in-home public nursing services, or a "myriad of other services"—could have eliminated the need for removal. The Department's efforts need only be "reasonable under the circumstances" and "based on the particular circumstances of a case"; they need not be "perfect" or "the best that might be provided in an ideal world." (*Id.* at p. 725; *In re Amy M.* (1991) 232 Cal.App.3d 849, 856; *Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598-599.) The additional efforts mother proposes are not "reasonable under the circumstances" because they would be ineffectual. As noted above, the risk to Jessica's well-being (and thus, the potential need for removal) stems from (1) mother's failure to take her medications and (2) Jessica's very young age, which puts her in need of constant care and supervision (see *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824 [noting this as the basis for the "tender years" presumption]). Because mother could stop taking her medications at any time, Jessica could be immediately placed at risk of harm at any time. (Cf. *In re Ashly F.* (2014) 225 Cal.App.4th 803, 809-810 [juvenile court erred in not considering removal of one of two parents from

the home]; *In re Henry V.* (2004) 119 Cal.App.4th 522, 529-531 [juvenile court erred in not considering unannounced visits after a single incident of child abuse].) Unannounced visits would do nothing to guard against that risk. Nor would in-home nursing services, unless those services were 24/7. Yet mother offers no authority for the proposition that the Department must provide a live-in nurse 24/7 before removal is appropriate.

II. Sufficiency of Finding

Mother next argues that the juvenile court did not comply with its statutory duty to make findings on the record. Because the court's oral and written statements are undisputed and because compliance turns on what the statutes require, we independently review this issue. (*In re R.C.* (2011) 196 Cal.App.4th 741, 748 ["the proper interpretation of a statute and the application of the statute to undisputed facts are questions of law, which we review de novo"].)

As noted above, the juvenile court is required to "state the facts on which the decision to remove the [child] is based." (§ 361, subd. (e).) The juvenile court in this case complied with this duty because the court's explanation of its jurisdictional findings—namely, why Jessica was at risk of physical harm due to the very real possibility mother would stop taking her medications and be unable to care for Jessica—are the same facts that support the finding that "there would be a substantial danger" to Jessica's "physical health, safety, protection, or physical or emotional well-being" if Jessica "were returned home" and why reasonable means short of removal would not alleviate that danger. These are the critical questions for removal (§ 361, subd. (c)(1)). (See also *In re Heather A.* (1996) 52 Cal.App.4th 183, 196 [facts may be stated orally].) Even if we were to conclude that this

recitation of facts did not suffice because the court was at the time discussing its jurisdiction rather than removal, the court's failure to expressly repeat those facts or refer back to them when later discussing removal was harmless because "we can see no reasonable probability that . . . the [juvenile] court" "would have answered [the removal question] differently" had it done so. (*In re J.S.* (2011) 196 Cal.App.4th 1069, 1079; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218 [a juvenile court's "failure" to "make findings" "will be deemed harmless [when] 'it is not reasonably probable such finding, if made, would have been in favor of continued parental custody' [citation]"].)

Mother responds that the juvenile court was also required to state the facts underlying its finding that the Department's efforts to prevent removal were reasonable. She is wrong. Section 361 requires no such finding, and the Rules of Court implementing that statute only require the juvenile court to make one of two findings regarding the Department's "reasonable efforts": "Reasonable efforts have been made to prevent removal" or "Reasonable efforts have not been made to prevent removal." (Cal. Rules of Court, rule 5.695.) No further factual elucidation is necessary. And even if it were, its absence is harmless here in light of the substantial evidence supporting the finding that the Department's efforts were reasonable.[2]

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2 To the extent that mother criticizes the Department's reports detailing its efforts to prevent removal for failing to comply with the duty to "discuss[] . . . the reasonable efforts [it] made to prevent or eliminate removal" (Cal. Rules of Court, rule 5.690(a)(1)(B)(i)), that criticism—even if accepted as valid—does not call for reversal because any deficiency in the Department's reports is harmless in light of the substantial evidence

DISPOSITION

The findings and orders are affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, P.J.
LUI

_____, J.
CHAVEZ

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supporting the juvenile court's finding that the Department's efforts were reasonable.